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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/827,564	04/19/2004	Richard Thiele JR.	THL-10002/29	3187
7590 12/29/2005 Gifford, Krass, Groh, Sprinkle, Anderson & Citkowski, P.C. Suite 400 280 N. Old Woodward Ave. Birmingham, MI 48009-5394			EXAMINER OKEZIE, ESTHER O	
			ART UNIT 3652	PAPER NUMBER

DATE MAILED: 12/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/827,564	Applicant(s) THIELE, RICHARD	
	Examiner Esther O. Okezie	Art Unit 3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 November 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Re claim 1, Sheehan et al discloses a blade for a shovel comprising: a scoop portion (14) having a width, a length, and a leading edge (18; see fig. 7 for front profile of similar scoop); an a plurality of concave scallops (46) on the leading edge; and each scallop defining a segment of a single circle; wherein the segments intersect at distinct forward points (fig 11A; col. 11, lines 46-61).
2. Re claim 3-5, the points are spaced apart by a distance that is substantially greater than the radius of the scallop.
3. Re claim 6, the scallops are substantially identical (fig 11A).
4. Re claims 7,9,10, the scoop portion is configured for "...the amateur and professional or commercial fields of horticulture, agriculture, and gardening, and general home use" (col. 12, lines 28-35), and " ...many scooping tasks such as scooping ice

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cream" (col. 8, lines 45-51). The scoop is configured for general domestic and outdoor use which would include snow shoveling, gardening, ice scraping, etc (fig 10).

5. Re claim 11, the leading edge is attached to the scoop portion (fig 11A).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sheehan et al. Sheehan et al. does not disclose the dimensions of the shovel, but between 3-12 scallops are disclosed. Sheehan et al. discloses, "The size of blade 12 will depend upon the application to which the tool is put, whether indoor or outdoor usage is contemplated, domestic or horticultural, and upon the size of the furrow, hole, or other excavation the tool is employed to make. For example, it will occur to the skilled designer of garden tools to make a relatively larger tool, according to the invention, for the purpose of setting medium to large sized plants than for digging narrow furrows for the planting of seeds or for many kitchen tasks such as scooping ice cream. Other particular blade or scoop sizes for a given application will also occur to those skilled in the art" (col. 8, lines 41-51). It would have been obvious to one of ordinary skill in the art at the time of the invention to design the tool dimensions based on the application of the tool.

2. Claims 8 and 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sheehan et al. in view of Guo.

3. Re claim 8, Sheehan et al. does not disclose stiffening ribs. Guo discloses a snow shovel with stiffening ribs (22). It would been obvious to one of ordinary skill in the art to modify the shovel of Sheehan et al. to include stiffening ribs in order to strengthen the frame of the shovel.

4. Re claim 12, Sheehan et al. does not disclose the leading edge and the scoop portion constructed of dissimilar materials. Guo discloses a snow shovel wherein the leading edge is constructed from steel and the scoop portion is constructed from aluminum or plastic. It would have been obvious to one of ordinary skill in the art to modify the shovel of Sheehan et al. to include a leading edge made of a dissimilar material then the scoop portion because the leading edge undergoes different stresses then the scoop portion, therefore materials of differing stress capacity should be used for greater shovel longevity.

Response to Arguments

Applicant's arguments with respect to claims 1-12 have been considered but are moot in view of the new ground(s) of rejection as described above.

Conclusion

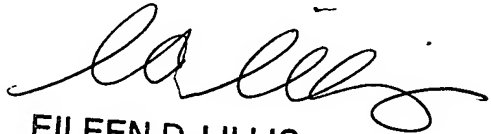
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Esther O. Okezie whose telephone number is (571) 272-8108. The examiner can normally be reached on Mon-Thurs 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EOO 12/12/05


EILEEN D. LILLIS
SUPERVISORY PATENT EXAMINER
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